

...The...

Separate Schools Act of Ontario



A Pamphlet containing the Original
Act of 1863, with notes by the
late Dr. Egerton Ryerson. :: :: :: ::

ALSO

A comprehensive summary of the
present Act, which contains many con-
cessions granted since Confederation,
along with important decisions on con-
tested points down to the year 1908.



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THE SEPARATE SCHOOLS ACT OF ONTARIO

Showing the Additional Concessions Granted Since Confederation.

INTRODUCTORY.

The purpose of this pamphlet is to set out in exact form the conditions under which Separate Schools were granted by the British North America Act, and to show the concessions which have been added to the original provisions. For many years prior to 1867—when the Federal system was adopted—a persistent agitation was maintained to force a system of Roman Catholic Separate Schools upon the Province of Upper Canada (now Ontario). Hon. R. W. Scott, now Secretary of State in the Government of Sir Wilfrid Laurier, was a member of Parliament for the united Provinces of Upper and Lower Canada. He was most persistent in forcing upon the attention of Parliament a Separate School Act. He was met with vigorous opposition by the late Dr. Egerton Ryerson, then Superintendent of Education for Upper Canada. There was in this Province also a large and active majority opposed to Separate Schools. The conflict in Parliament and in the country raged with remarkable vigor. Both sides had their press, and the electoral campaigns were embittered, as is invariably the case in religious disputes.

Finally, in 1863, by the Quebec members of the United Parliament voting solidly with a minority of the members from the Province of Upper Canada, an Act, known as the "R. W. Scott Separate School Act," was passed. It was a comparatively innocuous measure. The late Egerton Ryerson had a good deal to do with framing it, and his strong convictions led him to safeguard the interests of the Public Schools as well as he could. This Act was accepted as a finality by the leaders of the Roman Catholic Church; but no sooner was it passed than they began agitating for amendments of the most radical character. This has gone on until the present time, and we now have a Separate School law that is not at all like that which was originally adopted. The Act illustrates in its present shape the old fable of the camel which first got its head into the house and ultimately forced the owner out. The Separate School Act, as it stands now, seriously hampers the work of the non-sectarian Public Schools, and makes it difficult for them to perform the work which their founder intended.

The following chapters contain (1) a memorandum giving the charter of the denominational schools; (2) the rights which were conceded by the original legislation; (3) statements from Ministers

of the Crown showing their views upon certain parts of the Act; (4) the position of Post-Confederation legislation; (5) section 93 of the British North America Act; (6) the text of the Separate School Act at the time of Confederation, with references indicating the time of the amendments; (7) a memo by the late Dr. Egerton Ryerson, making comparisons between the Acts 1867 and 1855; (8) the later amendments; and (9) a summary of the Separate School Act of 1897.

The reader should be prepared to study the pamphlet with some care. A cursory reading will not give the information that it contains. Something more than a glimpse at it is necessary to make it of value in understanding the question thoroughly; and as this is the intention of the publication, it is hoped that it will be treated in the way suggested.

At the regular quarterly meeting of the County Orange Lodge of Toronto, held on the 26th day of April 1905, a special committee was appointed to prepare a report giving a synopsis of the Confederation Act, in so far as it relates to sectarian education in Ontario, and also to prepare a synopsis of all the legislation by the Ontario Legislature granting special privileges to sectarian schools since Confederation.

The committee met and organized in due course, and after general discussion a memorandum on the subject was prepared and submitted to a meeting of the committee on the 23rd day of January, 1906, and adopted as the report of the committee.

The memorandum is as follows:

The charter of "denominational schools" in the Provinces of Ontario and Quebec is contained in the 93rd section of a statute of the Parliament of Great Britain and Ireland (30-1 Vict. (Imp.) c. 3), known as "The British North America Act, 1867," which was enacted on the 29th day of March, A. D. 1867, and came into operation, as law, on the 1st day of July, 1867. For fuller reference the complete section is set forth in the appendix hereto, but it is sufficient to say generally that with the exceptions and qualifications therein contained, the authority to make laws in relation to education in any Province of Canada was conferred exclusively upon the Legislature of such Province, with the limitation that "nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union" (See sub-sec. 1.)

The "Union" referred to was proclaimed by her late Majesty Queen Victoria in Council on the 22nd day of May, 1867, to take effect, as previously stated, on the 1st day of July, 1867.

For the purposes of the enquiry in hand it is necessary (1) in order to know what rights or privileges "with respect to denominational schools," which any class of persons had by law in the Province of Ontario at the Union that a precise examination of the laws in effect upon the 30th day of June, 1867, in Upper Canada (as the Province of Ontario was up to that time called), should be made,

and when this is completed it may then be deduced what such "rights and privileges consist of. (2) In order to know what the present state of those rights or privileges are it is necessary that the laws subsequently enacted should be similarly examined.

The First Separate School Act.

An examination of the earlier laws discloses the following state of affairs. On the 5th of May, 1863, the Legislative Council and Assembly of the former Province of Canada (which, between the first day of July, 1840, and the 1st of July, 1867), had legislative jurisdiction in Lower Canada, now known as Quebec, as well as Upper Canada, enacted a law (popularly known as "The R. W. Scott Separate School Act"), entitled, "An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools," which repealed sections 18 to 36, both inclusive, of Chapter 65, of the Consolidated Statutes for Upper Canada, entitled, "An Act Respecting Separate Schools," and substituted in their stead 27 sections, which, it provided, were to be deemed part of the said Act. Both these statutes, together with a record of the division list of the votes recorded, upon which they were carried, are set out in the appendix hereto. From these statutes it has been deduced (by Mr. W. H. P. Clement, in his work on "The Canadian Constitution," on page 493), that the rights and privileges referred to may be shortly stated as follows:

1. The right to establish denominational schools.
2. The right to invoke State aid in the collection of taxes necessary for the support of such schools from the supporters thereof.
3. The privilege of exemption from taxation for the support of the Public Schools of the Province.
4. The privilege of having taught in such Separate schools, tenets of their denomination, to which we should perhaps add the right or privilege which any member of any denomination has to choose, as between the Separate Schools of his denomination, and the public schools of the Province, which he will support.

Separate Schools to Share Government Grant.

It is to be noted, however, that Mr. Clement's summary does not include the very important rights (provided for by Sec. 20 of the Act of 1863), "to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and . . . also to a share in all other public grants, investments and allotments for Common School purposes now made, or hereafter to be made, by the Province, or the municipal authorities (but see Sec. 21), according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same city, town, village or township."

Again, in a speech delivered by Hon. Oliver Mowat in the Legislative Assembly of Ontario on the 25th of March, 1890, another right or privilege claimed was referred to as follows:

"At the Union of 1867 these (Roman Catholics) schools, by express enactment, were entitled to employ teachers qualified as "teachers by the then law of either Upper or Lower Canada, and "teachers so qualified by the law of Catholic Lower Canada were "entitled to be employed by any Separate Schools in Upper Canada "which chose to employ them, I presume the object was to include

"certain religious orders. This is claimed to be one of the rights "or privileges conferred on Separate Schools by the constitution; "and these teachers, in case of being selected by the Roman Catholic "supporters of a Separate School, claim a right to be teachers of "such a school, and to be employed in that capacity."

In the course of the same debate Hon. C. F. Fraser, a very prominent Roman Catholic, made the following remarks:

"At the time that the British North America Act was passed we "had the privilege of selecting as teachers for Separate Schools those "qualified under the then law or regulations of either Upper or "Lower Canada—Ontario or Quebec—and I say that there was good "reason for this privilege being given to us. I say that this House "had no right under the British North America Act to change or "alter this right."

Reasons for Open Voting.

In the same debate, Hon. C. F. Fraser also said: He objected to the proposal to impose the ballot upon Separate School supporters for various reasons. One reason, as had been well pointed out by the Minister of Education (Hon. G. W. Ross), was that the compulsory adoption of the ballot would be a violation of the constitution. It was only necessary to look at the system of election in operation at the time of Confederation to see in this what every reasonable person would be prepared to admit, an infringement of their rights, an attempt to do away with the privileges that the Roman Catholics then enjoyed. The point, however, would be made still more clear by supposing that the then system of voting had been by ballot, and that for any reason, no matter what, it were now proposed to abolish the ballot and to compel the election of trustees by open voting. Would it be contended that to so enact would not deprive Separate School supporters of a right and privilege—namely—the right and privilege of electing their trustees by ballot? What difference in principle, he asked, could there be between the supposed attempt to take away the ballot and the attempt now being made to take away the open voting?"

In the course of the same debate Hon. G. W. Ross (Minister of Education), said:

"To adopt his (Mr. Meredith's bill), which provided that: 'Notwithstanding the provisions of any Act or law to the contrary, no person otherwise liable for Public School rates shall be exempt from the payment thereof, or be liable for the payment of rates in support of a Roman Catholic Separate School unless he shall have given the notice provided for by section 40 of the Separate Schools Act,' would be an admission that the notice under section 40 had been withdrawn. The Government had no right to withdraw that notice; it could not withdraw it, because it was a privilege the Roman Catholics had a right to under the B. N. A. Act of 1867, and they would have been placed in an anomalous and unfair position were it withdrawn."

This explanation apparently overlooks the point of vital difference between Mr. Meredith's proposed change and section 40, inasmuch as section 40 permitted the notice to be given "by or on behalf of any ratepayer," whereas, the suggested alteration made no provision for the giving of notice on behalf of the ratepayer.

The Position of Post-Confederation Legislation.

Upon the very important question of the constitutional right of the Legislature of Ontario to repeal amendments to and changes in the Acts respecting Separate Schools in Ontario enacted since Confederation, Sir Oliver Mowat was asked in the Legislature (on the

16th March, 1895), whether such was the law, and replied (see The Globe's report of the debate).

"Under the decisions of the Judicial Committee of the Imperial Privy Council (See *Winnipeg vs. Barrett* (1892) A. C. 437; 5 Cart. p. 32; 8 Times L. R. 745; *Winnipeg vs. Logan* (1892) A. C. 437; 5 Cart. p. 32; 8 Times 745; and *Brophy vs. the Attorney-General of Manitoba* (29 January, 1895), A. C. 202; 5 Cart. (156), the enactments of the Legislature of Ontario in regard to Separate Schools since Confederation can be repealed by this Legislature."

THE BRITISH NORTH AMERICA ACT, 1867.

30th and 31st Victoria, Chapter 3, Sec. 93.

In and for each Province, the Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union.

2. All the powers, privileges, and duties at the Union, by law conferred and imposed in Upper Canada, on the Separate Schools and School Trustees of the Queen's Roman Catholic subjects, shall be, and the same are hereby, extended to the Dissident Schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

3. Where, in any Province, a system of Separate or Dissident Schools exists by law at the Union, or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General-in-Council, from any Act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects, in relation to education.

4. In case any such Provincial law, as from time to time seems to the Governor-General-in-Council requisite for the due execution of the provisions of this section, is not made, or, in case any decision of the Governor-General-in-Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General-in-Council, under this section.

CONSOLIDATED STATUTES OF UPPER CANADA.

CAP. LXV.—An Act Respecting Separate Schools.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

(Clauses 1 to 17 deal exclusively with Separate Schools for Protestant colored people. As these have no bearing on the question with which the pamphlet deals, it has been thought wise not to occupy space with them.)

18. Any number of persons, not less than five, being heads of families, or freeholders, or householders, resident within any school section of any township, or within any ward within any city or town, and being Roman Catholics, may convene a public meeting of persons desiring to establish a Separate School for Roman Catholics in such school section or ward, for the election of trustees for the management of same. 18, V. C. 131, S. 2.

19. A majority of the persons present, not less than ten in number, being freeholders, or householders, and being Roman Catholics,

may at any such meeting, elect three persons, resident within such section, to act as trustee for the management of such Separate School, and any person being a British subject may be elected as a trustee, whether he be a freeholder or householder, or not. 18 V. C. 131, C. 3.

20. A notice in writing addressed to the Reeve, or to the Chairman of Common School Trustees in the township, city or town in which such section is situated, may be given by all persons, whether they were present at such meeting or not, who are freeholders, or householders, residents within such section, and Roman Catholics, and favorable to the establishment of such Separate School, declaring that they desire to establish a Separate School in such school section, and designated by their names, professions and places of abode, the persons elected in the manner aforesaid, as trustees for the management thereof. 18 V. C. 131, S. 4.

21. Every such notice shall be delivered to the proper officers, by one of the trustees, so elected, and it shall be the duty of the officer receiving same, to endorse thereon the date of the receipt thereof, and to deliver a copy of the same so endorsed and duly certified by him to such trustees. 18 V. C. 131, S. 5.

22. From the day of the delivery and receipt of every such notice the trustee therein named shall be a body corporate, under the name of "The Trustees of the Roman Catholic Separate School for the section number ———, in the township (city or town as the case may be), in the county of ———." 18 V. C. 131, S. 6.

23. When such Separate Schools are established in more than one ward of any city or town, the trustees of such Separate Schools may, if they think fit, form a union of such Separate Schools, and from the day of the notice in any public newspaper, published in such city or town announcing such union, the trustees of the several wards shall together form a body corporate, under the title of "The Board of Trustees of the Roman Catholic United Separate Schools for the city (or town) of ———, in the County of ———." 18 V. C. 131, S. 7.

24. The trustees of such Separate Schools forming a body corporate under this Act shall have the same power to impose, levy and collect school rates, or subscriptions upon and from persons sending children to, or subscribing towards the support of such schools, and all other powers in respect to Separate Schools, as the trustees of Common Schools, have and possess, under the provision of the Act relating to Common Schools. 18 V. C. 131, S. 8.

25. The trustees of such Separate Schools shall perform the same duties, and shall be subject to the same penalties as trustees of Common Schools; and teachers of Separate Schools shall be liable to the same penalties as teachers of Common Schools. 18 V. C. 131, S. 8.

26. The trustees of such Separate Schools shall remain in office until the second Wednesday of the month of January next, following their election, on which day in each year a meeting shall be held in each sub-section or ward, commencing at the hour of ten of the clock in the forenoon for the election of three trustees for Separate Schools theretofore established, but no trustee shall be re-elected at any such meeting without his consent, unless after the expiration of four years from the time when he went out of office. 18 V. C. 131, S. 9.

27. The trustees of such Separate Schools shall allow children from other school sections, whose parents or lawful guardians are Roman Catholics, or to be received into any Separate School under their management, at the request of such parents or guardians, and no children attending such school shall be included in the return hereafter required, to be made to the Chief Superintendent of Education, unless they are Roman Catholics. 18 V. C. 131, S. 10.

28. A majority of the trustees of such Separate Schools, in any township or village, or of the Board of Trustees in any town or village, shall have power to grant certificates of qualification to teachers of Separate Schools, under their management, and to dispose of all school funds of every description coming into their hands for school purposes. 18 V. C. 131, S. 11.

29. Every person paying rates, whether as proprietor or tenant, who, on or before the first day of February of any year, give to the clerk of the municipality in which any Separate School is situated, notice that he is a Roman Catholic, and a supporter of such Separate School, and shall be exempt from the payment of all school rates imposed for the year then next following for the support of Common Schools and of Common School Libraries within the ward or school section wherein such Separate School is established. 18 V. C. 131, S. 12.

30. Every clerk of the municipality upon receiving any such notice shall deliver a certificate to the person giving such notice to the effect that the same has been given, and showing the date of such notice. 18 V. C. 131, S. 12.

31. Any person who fraudulently gives any such notice, or willfully makes any false statement therein, shall not thereby secure an exemption from rates, and shall be liable to a penalty of \$40, recoverable with costs before any Justice of the Peace at the suit of the municipality interested. 18 V. C. 131, S. 12.

32. Nothing in the last three preceding sections contained shall exempt any person from paying any rate for the support of Common Schools or Common School Libraries, or for the erection of a school house or school houses imposed before the establishment of such Separate School. 18 V. C. 131, S. 12.

33. Every such Separate School shall be entitled to a share in the funds annually granted by the Legislature of this Province for the support of Common Schools, according to the average number of pupils attending such school, during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a Separate School, as compared with the whole average number of pupils attending school, in the same city, town, village or township. 18 V. C. 131, S. 13.

(1) But no such Separate School shall be entitled to a share in any such fund, unless the average number of pupils so attending the same be fifteen or more (periods of epidemic or contagious diseases excepted).

(2) Nothing herein contained shall entitle any such Separate School within any city, town, village or township to any part or portion of school moneys arising or accruing from local assessment for Common School purposes, within the city, town, village or township, or the county, or union of counties, within which the city, town, village or township is situated.

34. The trustees of each such Separate School shall, on or before the thirtieth (30th) day of June, and the 31st day of December in each year, transmit to the Chief Superintendent of Education for Upper Canada a correct statement verified by at least one of such trustees under oath, made before a Justice of the Peace, for the county within which a Separate School is situated, of the names of the children attending such school, together with the average attendance during the six next preceding months, or during the number of months which have elapsed since the establishment thereof, and the number of months it has been so kept open, and the Chief Superintendent shall thereupon determine the portion which the trustees of such Separate School are entitled to receive out of such legislative grant, and shall pay over the amount thereof to such trustees. 18 V. C. 131, S. 12.

35. The election of trustees for any such Separate School shall become void unless a Separate School be established under their management within two months from the election of such trustees. 18 V. C. 131, S. 15.

36. No person subscribing towards the support of a Separate School established as herein provided either for Roman Catholics, Protestants, or colored people, or sending children thereto, shall be allowed to vote at the election of any trustee for a Common School in the city, town, village or township in which such Separate School is situated. 16 V. C. 185, S. 4; 18 V. C. 131, S. 16.

26 VICTORIA (CAN.), (1863), C. 5.

"An Act to Restore to Roman Catholics in Upper Canada Certain Rights in Respect to Separate Schools.

(Assented to 5th of May, 1863.)

The notes to sections which follow are those made by Rev. Egerton Ryerson, D.D., former Superintendent of Education, showing comparisons between this Act and what is called "The Tache Act" of 1855, as printed in the book by Dr. J. George Hodgins, M.A., entitled "The Legislation and History of Separate Schools in Upper Canada" (1897).

Whereas, it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools, and to bring the provisions of the law respecting Common Schools; therefore Her Majesty, by the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. Sections eighteen to thirty-six, both inclusive, of Chapter sixty-five of the Consolidated Statutes for Upper Canada, intituled, "An Act Respecting Separate Schools," are hereby repealed, and the following shall be substituted in lieu thereof, and be deemed to form part of the said Act.

II. Any number of persons, not less than five, being heads of families, and freeholders or householders, resident within any school section of any township, incorporated village, or town, or within any ward of any city, or town, and being Roman Catholics, may convene a public meeting of persons desiring to establish a Separate School for Roman Catholics, in such school section, or ward, for the election of trustees for the management of same.

III. A majority of the persons present, being freeholders, or householders, and being Roman Catholics, and not candidates for election as trustees, may at any such meeting, elect three persons resident within such section, or an adjoining section, to act as trustees for the management of such Separate School, and any person, being a British subject, not less than twenty-one years of age, may be elected as a trustee, whether he be a freeholder, or householder, or not.

IV. Notice in writing that such meeting has been held, and of such election of trustees, shall be given by the parties present at such meeting to the Reeve, or head, of the municipality, or to the Chairman of the Board of Common School Trustees, in the township, incorporated village, town or city, in which such school is about to be established, designating by their names, professions and residences, the persons elected in the manner aforesaid, as trustees for the management thereof, and every such notice shall be delivered to the proper officer by one of the trustees so effected, and it shall be the duty of the officer receiving the same to endorse thereon the date of the receipt thereof, and to deliver a copy of the same so endorsed, and duly certified by him to such trustee, and from the day of the

delivery and receipt of every such notice, or in the event of the neglect or refusal of such officer to deliver a copy so endorsed and certified, then, from the day of the delivery of such notice, the trustees therein named shall be a body corporate, under the name of "The Trustees of the Roman Catholic Separate School for the section No. —, in the township of —, or for the ward of —, in the city or town (as the case may be), or for the village of —, in the County of —."

(a) These sections embrace eighteenth to twenty-second sections, inclusive, of the existing Separate School Act of 1855, and are the same in substance as they; as are the second and third sections substantially the same as the 18th and 19th sections of the present Separate School Act.

V. The trustees of Separate Schools heretofore elected or hereafter to be elected, according to the provisions of this Act, in the several wards of any city or town, shall form on body corporate, under the title of "The Board of Trustees of the Roman Catholic Separate Schools of the city (or town) of —."

(b) This section is the substitute for the 23rd section of the present Separate School Act (of 1855), and assimilates the provision of the law in regard to Separate Schools and their supporters, to that of the Common School Act.

VI. It shall be lawful for a majority of the ratepaying supporters of the Separate School, in each Separate School section, whether the sections be the same or adjoining municipalities, at a public meeting duly called by the Separate School trustees of each such section, to form such sections into a Separate School Union Section, of which union of sections the trustees shall give notice within 15 days to the clerk or clerks of the municipality or municipalities, and to the Chief Superintendent of Education; and each such Separate School Union Section thus formed, shall be deemed one school section for all Roman Catholic Separate School purposes, and shall every year thereafter be represented by three trustees to be elected as in Common School sections.

2. And the said trustees shall form a body corporate under the title of "The Board of Trustees of the Roman Catholic United Separate Schools for the United Sections Nos. —," —, (as the case may be), in the —, (as the case may be).

(c) This clause, or section, is designed to provide that the supporters of Separate Schools may form union sections, the same as they may now do in the cities and towns, and which supporters of Common Schools may also do as provided in the 41st, 42nd, 43rd and 44th sections of the Consolidated Common School Act, previous to 1855. The Township Councils prescribed the boundaries of Separate as well as of Common School Sections; but as the names of all the petitioners for a Separate School had to be included in the Separate School section to be formed, they virtually formed their own section. By the Roman Catholic Separate School Act of 1855 the boundaries of a Separate School section were made identically with those of the Common School section, but no provision was made for the union of Separate Schools in adjoining sections, as had been made for the union of Common School sections. This clause supplies the omission of the Roman Catholic Separate School Act of 1855.

7. The trustees of Separate Schools, forming a body corporate under this Act, shall have the power to impose levy and collect school rates, subscriptions upon and from persons sending children to, or subscribing towards the support of such schools, and shall have all the powers in respect of Separate Schools that the trustees of Common Schools have, and possess, under the provision of the Act relating to Common Schools.

(d) This section is the same as the 24th section of the present Roman Catholic Separate School Act.

8. The clerk or other officer of the municipality within or adjoining, which a Separate School is established, having possession of the assessors' or collectors' roll of the said municipality, shall allow any one of the said trustees, or their authorized collector, to make a copy of such roll in so far as it relates to the persons supporting the Separate School under their charge.

IX. The trustees of Separate School shall take and prescribe the following declaration before any Justice of the Peace, Reeve, or Chairman of the Board of Common Schools: "I, _____, will truly and faithfully, to the best of my judgment and ability, discharge the duties of the office of school trustee to which I have been elected, and they shall perform the same duties, and be subject to the same penalties as trustees of Common Schools; and teachers of Separate Schools shall be liable to the same obligations and penalties as teachers of Common Schools."

X. The trustees of Separate Schools shall remain respectively in office for the same period of time that the trustees for Common Schools do, and as is provided by the 13th section and its sub-section, for the Common School Act of the Consolidated Statutes for Upper Canada; but no trustee shall be re-elected without his consent, unless after the expiration of four years from the time he went out of office, provided always that whenever, in any city or town divided into wards, a United Board now exists, or shall hereafter be established, there shall be for every ward two trustees, each of whom, after the first election of trustees, shall continue in office two years, and until his successor has been elected, and one of such trustees shall retire on the second Wednesday in January, yearly, in rotation; and provided, also, that at the first meeting of the trustees after the election on the second Wednesday in January next, it shall be determined by lot, which of the said trustees in each ward, shall retire from office at the time appointed for the then next annual election, and the others shall continue in office for one year longer.

XI. After the establishment of any such school, the trustees thereof shall hold office for the same period and be elected at the same time in each year, that the trustees of the Common Schools are, and all the provisions of the Common School Act relating to the mode and time of election, appointments and duties of the chairman and secretary at the annual meeting. Terms of office and manner of filling up vacancies shall be deemed and held to apply to this Act.

XII. The trustees of Separate Schools may allow children from other school sections, whose parents, or lawful guardians, are Roman Catholics, to be received into any Separate School under their management, at the request of such parents or guardians; and no children attending such school shall be included in the return, hereafter required to be made to the Chief Superintendent of Education, unless they are Roman Catholics.

(i) This section corresponds precisely with the twenty-seventh section of the Roman Catholic Separate School Act of 1855.

XIII. The teachers of Separate Schools, under this Act, shall be subject to the same examinations, and receive their certificates of qualification in the same manner as Common School teachers generally; provided that persons qualified by law as teachers, either in Upper or Lower Canada, shall be considered qualified teachers for the purposes of this Act.

(j) This section is a substitute for the twenty-eighth section of the Separate School Act of 1855; and is, all must admit, a very great improvement on it.

XIV. Every person paying rates, whether as proprietor or tenant, who, by himself, or his agent, on or before the first day of March

of the present year, has given to the clerk of the municipality notice, in writing, that he is a Roman Catholic, and a supporter of a Separate School situated in the said municipality, or in a municipality contiguous thereto, shall be exempt from the payment of all rates imposed for the support of Common Schools, and of Common School Libraries, or for the purchase of land or erection of buildings for Common School purposes within the city, town, incorporated village, or section in which he resides, for the then current year, and every subsequent year thereafter, while he continues a supporter of a Separate School, and such notice shall not be required to be renewed annually; and it shall be the duty of the trustees of every Separate School to transmit to the clerk of the municipality, or clerks of municipalities (as the case may be), on or before the first day of June in each year, a correct list of the names and residents of all persons supporting the Separate School under their management, and every ratepayer whose name shall not appear on such list shall be rated for the support of Common Schools.

(k) This section is a substitute for the twenty-ninth section of the Separate School Act of 1855. It substitutes the first day of March for the first day of February, which can cause inconvenience or disadvantage to nobody, as municipal rates for school purposes are never levied until long after March. The proprietor or tenant, by himself or his agent, gives notice; and it has already been legally decided that a notice by the agent of a proprietor or tenant is as valid, according to the Separate School Act of 1855, as a notice by himself in person, and is so accepted and acted upon. It is unjust, therefore, to omit expressing what is already held to be law, merely to afford an opportunity and pretext for vexing and annoying individuals in certain localities. Another provision in this section is that the notice shall not be repeated by the individual annually, but shall be repeated with his address by the trustees as his agent. This is the practice which has always been pursued in some municipalities. In Lower Canada the supporter of the Dissentient or Separate School never repeats, or renews this first notice as a supporter of such school; and why should the Roman Catholics be required to do that in Upper Canada, which the Protestants are not required to do in Lower Canada, unless to inconvenience and annoy him as much as possible. This requires each Roman Catholic, proprietor or tenant, to give notice to the clerk of the municipality when he desires to become a supporter of a Separate School; and the 18th requires him to give notice to the same clerk when he desires to cease being a supporter of such school, and in the interval the trustees are required annually to give to the same clerk (for the information of the Municipal Council in levying school rates), the name and residence of each supporter of a Separate School, and they are subject to severe penalty in case they make an incorrect return.

XV. Every clerk of a municipality, upon receiving any such notice, shall deliver a certificate to the person giving such notice to the effect that the same has been given, and showing the date of such notice.

XVI. Any person who fraudulently gives any such notice, or willfully makes any false statement therein, shall not thereby secure any exemption from rates, and shall be liable to a penalty of \$40, recoverable with costs before any Justice of the Peace, as the suit of the municipality interested.

XVII. Nothing in the last preceding section contained shall exempt any person from paying any rate for the support of Common Schools or Common School Libraries, or for the erection of a school house or school houses, imposed before the establishment of such Separate School.

XVIII. Any Roman Catholic, who may desire to withdraw his

support from a Separate School, shall give notice in writing to the clerk of the municipality before the second Wednesday in January in any year, otherwise he shall be deemed a supporter of such school; provided, always, that any person who shall have withdrawn his support from any Roman Catholic Separate School, shall not be exempted from paying any rate for the support of Separate Schools, or Separate School Libraries, or for the erection of a Separate School house, imposed before the time of his withdrawing such support from the Separate School.

XIX. No person shall be deemed a supporter of any Separate School unless he resides within three miles (in a direct line), of the site of the school house.

(1) No explanatory remarks are required, and no one will object respecting the directions given, and the restrictions and penalties imposed by the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth sections of the bill.

XX. Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made, or hereafter to be made, by the Province, or the municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same city, town, village, or township.

(m) This section is a substitute for the first part of the thirty-third section of the Separate School Act of 1855. The point of difference is, that this section gives Separate Schools the right of sharing in other "public grants," investments and allotments, for Common School purposes, than the Parliamentary School Grant. The only public grant, or investment, that can come within this provision, is the Clergy Reserve Fund, when applied by municipalities to Common School purposes. This fund is distributed by law among the several municipalities according to the number of ratepayers in each—Roman Catholic ratepayers, of course, as well as Protestant. This fund forms no part of the Common School Fund, and is not subject to Common School regulations. When a municipal council chooses to apply the portion of the Clergy Reserves Fund apportioned to its municipality to Common School purposes, it ought to do so in the equal interest of all the ratepayers, and not in the way to exclude any portion. If the Common School law allows portions of those ratepayers (both Protestant and Roman Catholic), to have Common Separate Schools, they are acting under law in availing themselves of this permission, as much as those who avail themselves of the permission, to establish Common Schools. For a municipal council to apply the share of the Clergy Reserves Fund placed under its control, to aid one class of these schools, and not the other, is as clearly to exclude one class of ratepayers from their rightful share of that fund as if they were prescribed by name. Some municipal councils have acted very justly and fairly in regard to both classes of Common Schools; and if any other Council have done or should do otherwise, the Legislature should surely protect rights of the minority against any such prescription.

XXI. Nothing herein contained shall entitle any such Separate School within any city, town, incorporated village, or township to any part or portion of school moneys, arising or accruing from local assessment for Common School purposes within the city, town village or township, or the county or union of counties, within which the city, town, village or township is situated.

(n) This section corresponds with the second proviso of the thirty-third section of the Separate School Act of 1855, and effectually protects all school moneys arising from local assessment against any claim on behalf of Separate Schools.

XXII. The trustees of each Separate School shall, on or before the 13th day of June and the 31st day of December of each year, transmit to the Chief Superintendent of Education for Upper Canada, a correct return of the names of the children attending such school, together with the average attending during the six next preceding months, or during the number of months that have elapsed since the establishment thereof; and the number of months it has been so kept open; and the Chief Superintendent shall thereupon determine the proportion which the trustees of such Separate School are entitled to receive out of the legislative grant, and shall pay over the amount thereof to such trustee.

(r) This section is identical with the 34th section of the Separate School Act of 1855, except that part which requires the returns to be made on oath—a requirement never exacted of Common School trustees, never required of Separate School trustees before 1855, not required of the trustees of Protestant Separate Schools in Lower Canada since 1856, and for which requirement no reason of justice or necessity exists, as the same penalties are imposed for making incorrect returns to obtain additional aid, as if they were made on oath.

It may here be remarked that the first proviso in the thirteenth section of the Separate School Act of 1855, which says: "That no Separate School shall be entitled to share in any such fund, unless the average number of pupils attending same be fifteen or more," has been omitted. It was contained in the bill as first introduced, but was struck out, at the suggestion of the Chief Superintendent, who stated it would be useless and inoperative, not required in regard to Common Schools, the average half-yearly attendance in some of which fell below fifteen—and although Separate Schools, whose half-yearly attendance did not amount to fifteen, were not legally entitled to share in the Legislative School Grant, yet that any such school kept open by local liberality, according to law, by a legal qualified teacher, was equitably entitled to aid according to its work, whether its pupils numbered more or less than fifteen.

There is also another point on which a remark might be made. It has been erroneously alleged that this bill relaxes the existing law in regard to the time of keeping open schools each year. It will be seen by referring to the first part of the thirty-third and thirty-fourth section of the Separate School Act of 1855, that a Separate School is entitled to receive aid from the Legislative School Grant in proportion to the time (in connection with average attendance), it is kept open, whether more or less than six months, and the twenty-second section of the bill makes not the least change in that respect.

XXIII. All judges, members of the Legislature, the heads of the municipal bodies in their respective localities, the Chief Superintendent and Local Superintendent of Common Schools, the clergymen of the Roman Catholic Church, shall be visitors of Separate Schools.

(s) Hitherto none but clergymen of the Roman Catholic Church have been admitted as visitors of Separate Schools. This section contains important and liberal provisions in the right direction.

XXIV. The election of trustees of Any Separate School shall become void unless a Separate School be established under their management within three months from the election of such trustees.

XXV. No person subscribing towards the support of a Separate School, established as herein provided, or sending children thereto, shall be allowed to vote at the election of any such trustee for a

Common School in the city, town, village, or township in which such Separate School is situated.

(t) The provision of the twenty-fourth and twenty-fifth sections of the bill need no remark, and will be objected to by none.

XXVI. The Roman Catholic Separate Schools (with their Registers), shall be subject to such inspection as may be directed, from time to time, by the Chief Superintendent of Education, and shall be subject, also, to such regulations as may be imposed, from time to time by the Council of Public Instruction for Upper Canada.

THE PRESENT SEPARATE SCHOOL ACT.

Summary of the Provisions of the Law as it Was in 1897.

It has been thought wise to publish in connection with the foregoing historical view of the Public School legislation in the Province of Ontario, a summary of the Separate School Act of 1887. This is necessary in order that a complete view of the subject and of the educational situation may be obtained. In what follows no attempt has been made to indicate the purport of every clause or section, but pains have been taken to bring out clearly and forcibly, and as far as necessary in exact language the really vital enactments of the law pertaining to Roman Catholic Separate Schools in the Province of Ontario. The Act is Chapter 294, in the Revised Statutes of Ontario (1897), and is entitled, "An Act Respecting Separate Schools." The first seventeen clauses deal entirely with Protestant colored Separate Schools. The provisions relating to Roman Catholic Separate Schools begin with clause eighteen, and the ten following clauses are taken up providing the machinery for the election of school trustees.

The one point of interest to the readers of this pamphlet is that voting by ballot is not provided for. Therefore, the elections of Separate School trustees are conducted on the principles of open voting, which makes the contest peculiar in this respect. In all other municipal contests or School Board elections the ballot is used.

Clause 28 deals with the duties and powers of the school trustees, sets out the duties of the secretary-treasurer, the appointment of the auditors, the filling of vacancies, and empowers the Board to demand from the township council, at or before its meeting in August that a rate of taxation shall be collected for the support of their school or schools, or for any other school purposes authorized by this Act, from the supporters of such Separate Schools.

Sub-Section 17 of this clause makes it imperative that the trustees should hold an annual meeting, at which they should give a full and detailed account of the receipts and expenditures of all schools, money received and expended on behalf of the school during the year, which statement must be signed by the trustees and by either or both of the auditors.

In Sub-Section 12 of Section 31, it is expressly provided that the voting for the election of trustees and for all other urban school purposes shall be by open vote.

Clause 32, however (as amended by 3 Edw. VII., C. 34, S. 3), provides that the Board of Separate School trustees of any city or town may, by resolution, to be passed between the first day of May and the first day of October in every year, require the election of members of the Board for such city, town or incorporated village, to be held by ballot on the same day as municipal councillors or aldermen are elected, as the case may be. Any such Board of Separate School trustees may in like manner discontinue the use of the ballot in such elections. No change in the method of voting, however,

after once being adopted, can be again changed for a period of three years.

The clerk of the municipality is required to furnish copies of the voters' list, giving the names of persons who are supporters of the Separate Schools, Roman Catholics, and a list of the names alphabetically arranged, of all ratepayers and persons entitled to vote in the election.

Clause 32, which covers fifteen pages of the Separate School Act, provides the machinery for holding elections, both under the ballot system and upon the principles of open voting. There is nothing in this, however, of an important character, though it is all special legislation however necessary for the proper conduct of elections.

Section 33, deals with the duties of the Board of Trustees. This lays upon the Board the duty of providing adequate accommodation for the children of Separate School supporters between the age of five and twenty-one, to provide suitable premises, apparatus, books and libraries, to determine the number, kind, grade and description of schools, to lay before the municipal council estimates for the money required for the expenses of the schools under their charge, to appoint a committee for each, and to collect, at their discretion, from the parents or guardians of children attending such schools, a sum not exceeding twenty cents per month, per pupil, to defray the cost of text books, stationery and other contingencies, and to see that all the pupils in the schools are supplied with a uniform series of text-books.

Clause 34 deals with the agreements between trustees and teachers. It provides that such shall be in writing signed by the parties thereto.

The duties of the teachers are set out in Section 35. The most important clause is number one, which requires the teacher to teach diligently according to the terms of his engagement with the trustees and the regulations of the Education Department. It is conceivable that what the trustees require may sometimes be at variance with the departmental regulations in which case it is doubtful whether any provision of the Act would enforce the latter.

The most desirable provision regarding teaching was made by Section 36, providing for proper qualifications. It reads thus: "The teachers of a Separate School, under this Act, shall be subject to the same examinations, and receive their certificates of qualification, in the same manner as Public School teachers generally; but the persons qualified by law as teachers, either in the Province of Ontario, or, at the time of the passing of The British North America Act, 1867, in the Province of Quebec, shall be considered qualified teachers for the purpose of this Act, R. S. O. 1887, C. 227, S. 61."

Section 42 states that every person paying rates, as owner or tenant, who gives notice to the clerk of the municipality on or before the first day of March in any year, that he is a Roman Catholic, and supporter of a Separate School located in the municipality, "or in a municipality contiguous thereto," shall be exempt from the rates imposed for Public School purposes, until further notice. Notice given subsequent to March first will do if the person become a resident or a ratepayer, provided an appeal, to be put on the assessment roll, is made to the Court of Revision. Any municipality can recover \$40 penalty where any false notice is given.

No person, under Section 43, shall be deemed a Separate School supporter unless he resides within three miles in a direct line of the schoolhouse site, and by Section 44, the support of the nearest Separate School is made compulsory. Section 46 permits non-residents to be assessed for Separate School purposes on unoccupied lands within three miles of a Separate School, even if outside the municipality in which the school is located.

Any Roman Catholic desirous of withdrawing his support from a Separate School must give notice in writing, under Section 47, to the clerk of the municipality, before the second Wednesday in January, though he cannot avoid liability for payments in arrears.

Section 48 requires the municipal clerk to register in a convenient index book in alphabetical order, the names of those who have given notice of their desire to be Separate School supporters, and also the dates of the notices. By this index the assessor must be guided. The assessor must also, according to Section 49, distinguish on his assessment rolls between Protestant and Roman Catholic, and state what school system is supported. If an assessor has personal knowledge that a ratepayer is a Roman Catholic, that will justify him under the second clause of this Section 49 in putting him down as a Separate School supporter, but otherwise, he must wait for the statement of the ratepayer himself, or of one made on his behalf "by his authority." Clause 3 authorizes the Court of Revision of the County Judge to hear any appeals in this connection. In cases where no appeal has been passed upon by the proper courts, a municipal council may have placed on the right list the names of "any ratepayers" who have been put in the wrong school tax column "through mistake or inadvertance."

The occupant or tenant is given right over the owner to determine what school system shall be supported, and he shall be liable for the rates if the names of both appear on the assessment rolls. No agreement between them to the contrary will be effective, though, where a tenant has failed to pay taxes, and the owner becomes liable, he is empowered to determine the question. This is the effect of Clause 53. The following clause gives to incorporated companies the right to be assessed for Separate Schools.

Under Section 55 Separate School Boards have the same power to assess and collect school rates as tax collectors possess under the Municipal Act.

Clause 5 of Section 55 contains the statement that municipal councils must make up the deficiency arising from uncollected Separate School rates out of the general funds of the municipality.

Section 58 makes it the duty of the municipal council to collect Separate School rates if so requested by the trustees 'at or before the meeting of the council in the month of August.' The previous clause calls upon the municipal clerk to obey the written request of the Separate School board once a year, for the names of all persons announcing the school system they prefer. All the rates must be paid over by the 14th of December in each year, without any deduction for the expense of collection which shall be borne by the municipality.

Section 59, and all the following, are included under the title "miscellaneous," but some of them are very significant. Permission is granted to Separate School trustees and municipalities under Section 59 to enter into an agreement for the allotment of a fixed proportion of the general rate for Separate School purposes in the place of the amount that would otherwise have to be levied, but the arrangement shall only be effective when the rate in the dollar of assessment actually levied for Separate School purposes is the same as that actually levied therein for Public School purposes. The power to borrow money and to make mortgages is conferred upon Separate School Boards by Section 61.

Section 62 seems to be of some importance, for it stipulates: "Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of "Public Schools, and shall be entitled also to a share in all other "public grants, investments, and allotments for Public School purposes now made or hereafter to be made by the Province or the

"municipal authorities, according to the average number of pupils attending the school during the twelve next preceding months or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same city, town, village or township."

The proviso is made by Section 63 that Separate Schools shall not be entitled to any school moneys raised on a municipality's assessment for Public School purposes. The next section requires the Separate School trustees to transmit to the Minister of Education on or before the 30th day of June and the 31st of December in each year a correct return of the names of the children in attendance, together with the average attendance during the previous six months, and the Minister shall thereupon determine the proportion to which the Separate School is entitled out of the Legislature grant, and shall pay over the amount to the trustees.

The Education Department is authorized under Section 67 to constitute as a model school for the training of Separate School teachers any Separate School, and in any county where this has been done, or when, from the special circumstances of the Separate Schools therein, the Minister of Education deems it expedient, he may recommend for appointment to the County Board of Examiners some one person "possessing qualifications prescribed by the Education Department."

Separate School trustees are given the privilege by Section 68 of appointing one High School trustee, not one of their number, but necessarily a ratepayer, but such trustee shall take no part in any Public School matters.

Disagreements between Separate School trustees and Public School inspectors and municipal authorities, or a protest against any proceedings of rural school trustees, made in writing or signed by five supporters of the Separate School concerned, may be referred to the Minister of Education for arbitrament, subject to an appeal to the Lieutenant-Governor-in-Council, whose award is made final.

The subject of superannuation takes up Sections 70 to 80. The next section makes every Saturday and every public holiday, besides every day proclaimed a holiday by the authorities of the municipality in which the teacher is engaged, shall be a holiday in Separate Schools. Penalties to which trustees are liable for neglect to act when elected to office, for supplying false information, for improper use of money, etc., are set forth in the remaining sections of the original Act.

The first amendment to the Act of 1887 extended the operation of the Separate School system by making it possible for ten or more heads of families in any portion of the Province not surveyed, to elect three of their number as school trustees, and on their providing suitable school accommodation, the Minister of Education may pay to them, not as in the Act proper, an amount based on the attendance, but such sum as might be approved by the Lieutenant-Governor-in-Council. It will be seen that this clause makes it possible for the Government to grant financial assistance to some Separate Schools, not as a right, to which they are entitled but as a favor, and the Roman Church is put in the position where, if it will only exercise the influence it usually brings to bear upon Governments, it can have its sectarian schools supported by Provincial funds to an extent not warranted by the conditions. The whole matter is placed where it may become a question of barter and sale.

The amendment proposed in 1902 seems to have even greater significance, and virtually, though under a disguise, extended the Separate system to High Schools. It provides: "The Separate School

"Board in any municipality or section in which there is no High School shall have power to establish in connection with the schools over which it has jurisdiction such courses of study in addition to the courses already provided for the fifth form as may be approved by the regulations of the Education Department. The classes established under such courses shall be known as 'Continuation Classes.'

"The trustees of any number of Separate School corporations may, by mutual agreement, determine that continuation classes shall be conducted in one only of the schools under the jurisdiction of the corporations entering into such agreement."

The two clauses, it will be seen, enable the Roman Catholics in a number of municipalities, which are about ready for the establishment of a High School to forestall the same by joining in the demand for "continuation classes" at one of the Separate Schools, and by a subsequent clause the Minister of Education is required to apportion among them such sums as may be apportioned by the Legislature, while the municipal council of the country is put under compulsion to pay for the maintenance of such classes "a sum equal to the Legislature grant," and any further sum the municipal council may deem expedient.

An amendment passed in 1904 enabled Separate School supporters in a township who have been contributing to the maintenance of a school supplying an urban municipality, as well as the township, or a portion of both, to establish a school of their own. It also changed the date for giving notice of desire to be assessed as Separate school supporters from March 1st to July 15th, and the time for withdrawing from the support of Separate Schools from the second Wednesday in January to the fourth Wednesday in May, and extended from March 1st to July 15th, the time at which, if a person became resident in the municipality, he might be assessed as a Separate School supporter.

Another amendment passed in 1904 permitted companies to have their school taxes devoted to the support of Separate Schools to the extent that Roman Catholics held shares in the company. A change made in 1905 stated that any notice given by a company of a desire to have taxes so applied in pursuance of a resolution in that behalf of the directors of the company should be deemed to be sufficient.

LATER AMENDMENTS.

In 1903 an Act was passed respecting Boards of Education in cities having 100,000 inhabitants or more, and is to be found in the statutes of that year, C. 31, and assented to on the 12th of June, 1903. Provision is therein made for the Constitution of the Board of Education consisting of fourteen members, composed as follows. (See S. 2, SS. 1.)

"Twelve members to be elected by a general vote of the persons qualified to vote at elections for members of the Public School Board in such city, and two members to be appointed by the Separate School Board of such city."

This statute was amended in 1904 by 4 Edw. VII., C. 32, and at the same session another Act was passed respecting Boards of Education in cities having less than 100,000, and also in towns and incorporated villages not included in the High School districts. This statute is known as 4 Edw. VII., C. 33, and assented to on the 26th April, 1904.

This Act provides for the formation of Boards of Education composed as follows. (See S. 2, SS. 1.)

"In cities having more than 50,000, but less than 100,000 inhabitants, 12 members to be elected, and two to be appointed by the Separate School Board of such city. In cities having less than 50,000 9 members to be elected, and one to be appointed by the Separate School Board of such city. In towns and incorporated villages, not included in High School districts, 7 members to be elected, and one to be appointed by the Separate School Board, if any, of such town or village."

Amendments in 1904 (Exemptions.)

All real property in this Province, and all income derived either within or out of this Province by any person resident therein or received in this Province by or on behalf of any person, resident out of the same, shall be liable to taxation subject to the following exemptions—that is to say:

(3) The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purpose of every university, every college, every High School, Public or Separate Schools, or any incorporated seminary of learning, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institutions, but not if otherwise occupied. (4 Edw. VII., C. 23, S. 5, assented to 26th April, 1904.)

Entry of School Supporters on Roll.

(26) Where the index book required by S. 48 of the Separate School Act is prepared, the assessor shall be guided thereby in ascertaining who have given the notices which are by law necessary in order to entitle supporters of Roman Catholic Separate Schools to exemption from the Public School tax. (4 Edw. VII., C. 23, assented to the 26th of April, 1904.)

(27) In any case where the trustees of any Roman Catholic Separate School avail themselves of the provision contained in section 49 of the Separate School Act, for the purpose (amongst others), of ascertaining through the assessors of the municipality the persons who are the supporters of Separate Schools in such municipality (where the entry in the index book mentioned in section 26 does not show a ratepayer to be a supporter of Separate Schools), shall accept the statement of the ratepayer, or a statement made on his behalf, and by his authority, and not otherwise, that he is a Roman Catholic, as sufficient prima facie evidence for placing such persons in the proper column of the assessment roll for Separate School supporters, or if the assessor knows personally any ratepayer to be a Roman Catholic, this shall also be sufficient for placing him in such last mentioned column. R. S. O. 1897, C. 224, S. 13. (5) See also R. S. O. 1897, C. 224, S. 49.

(28) In the case of a municipality in which there are supporters of a Roman Catholic Separate School therein or contiguous thereto, there shall be printed in conspicuous characters, or written across or on the assessor's notice to every ratepayer, provided for by section 46 of this Act, and set forth in Schedule F hereto, in addition to the proper entry heretofore required to be made in the column respecting the school tax, the following words, "You are assessed as a Separate School Supporter," or "You are assessed as a Public School supporter," as the case may be, or these words may be added to the notice to the ratepayer set forth in this schedule.

(2) Where a ratepayer, who was in the next preceding year assessed as a Public School supporter, is being assessed as a Public School supporter, or where a ratepayer who was in the next preceding year assessed as a Separate School supporter, is being assessed as a

Public School supporter, it shall be the duty of the assessor to give, in addition to all other notices, a written or printed notice to such ratepayer that such change is being made. R. S. O. 1897, C. 224, S. 53.

The following judgment by His Honor Judge James R. O'Reilly, judge of the County Court of the united Counties of Stormont, Dundas and Glengarry, delivered by His Honor on the 17th day of January, 1908, in an action by the Board of Trustees of the Roman Catholic Separate Schools of the village of Chesterville, against the corporation of the village of Chesterville, will illustrate how the law stands and is administered in reference to statements made on behalf of a ratepayer that he is a Roman Catholic. The judgment reads as follows:

"The plaintiffs on August 1st, 1905, held a regular meeting of their Board, when the following motion was carried: 'Moved by Thos. Flynn, seconded by Mr. Gibbins, that the sum of \$798.00 be required for school purposes for the year 1905 from village ratepayers.'

"On or about the same date the secretary-treasurer of plaintiffs' Board signed the following notice as such officers, and subsequently sent it to the clerk of the defendants, who received it about the second day of September, 1905:

" 'Chesterville, Aug. 15, 1905.

" 'W. J. Nash, Esq.,

" 'Clerk of the Chesterville Corporation:

" 'Please take notice that the Roman Catholic Separate School Board require you to levy 15 mills on the R. C. Separate School supporters' assessment of \$53,200.00, to raise \$798.00 for the year 1905.'

"The defendants then levied on the Roman Catholic Separate School supporters of the village according to revised assessment roll a rate of 15 mills on the dollar, and collected same.

Such levy amounted in all to the sum of \$692.19, which was paid over to plaintiff's board, and was received by them under protest.

"The plaintiff sued to recover the difference between \$798 and \$692.19, being \$105.81, on which latter sum they claim interest from the 14th day of December 1905.

"The defendants plead in answer that plaintiffs only required a levy of 15 mills to be made on the supporters of Roman Catholic Separate Schools for the year 1905, and that this was the meaning of the paper writing purporting to be a requisition from the Separate School Board, and defendants state and aver that if a requisition had been given them requiring them to raise \$798, they were willing, and still are willing, to raise the amount of \$105.81 claimed by the plaintiffs by a levy on the Separate School supporters for the year A. D., 1905.

"The plaintiffs reply that the reference in the so-called requisition to the 15 mills rate was made by inadvertence, and that there is no statutory provision for same and, that defendants, by acting on the requisition, and making part payment of the \$798 required, waived any irregularity, and that the requisition was a valid request for \$798.00.

"The plaintiffs also reply that the defendants have levied the \$105.81 for the plaintiffs, but have never paid over same to plaintiffs.

"The whole difficulty between these two corporations, plaintiffs and defendants, respectively, arose from the fact that the assessment of two Roman Catholic ratepayers in said village, namely, one Michael O'Keefe and one Frank McCloskey, were included as a part of the sum of \$53,200.00 mentioned in the notice given by plaintiffs' secretary-treasurer as being the R. C. Separate School supporters' assessment, whereas, by the revised assessment roll for 1905 these

two men appear as Public School supporters, and 15 mills on their respective assessments exactly make the sum of \$105.81 in dispute.

"When defendants' council met to consider the question of the school rates for the year 1905 the notice given by plaintiffs' secretary-treasurer was before the meeting, and he was sent for and attended. He and defendant Reeve checked over the revised assessment roll, and McCloskey and O'Keefe were there found to be rated as Public School supporters; the defendants' council, instead of dealing with the matter under Section 50 of the Separate Schools Act, as they had the power to do, and definitely decided whether there was any mistake or inadvertence by which McCloskey and O'Keefe, or either of them had been placed in the wrong school tax column in the roll, levied the 15 mills rate on the assessment of those appearing as Separate School supporters on the roll, which levy fell \$105.81 short of the \$798.00 required for Separate School supporters who were assessed as such on the roll, a sum of \$134.30 in excess of the sum required for Public School purposes for that year. According to the evidence of the Reeve and the defendants' corporation this extra levy was made for two reasons, one being to avoid a fraction appearing in the Public School rate, and the other being, that as in striking the 15 mills rate on Separate School supporters according to the roll, the final disposition of McCloskey and O'Keefe's taxes had been left open. Defendants wished to be in the position to pay plaintiffs the amount of McCloskey and O'Keefe's taxes if plaintiffs cared to prove their right to such taxes. The facts in connection with the question of the school taxes of Messrs. McCloskey and O'Keefe for the year 1905, as far as I have been able to gather them from the evidence are, that the Rev. Father Quinn, who was the Roman Catholic parish priest at Chesterville, for some time prior to and during the year 1904, and who so continued to be until very early in 1905, was anxious to secure for the plaintiffs the benefit of the taxes of Messrs. McCloskey and O'Keefe, who were Roman Catholics, but who were Public School supporters.

"From O'Keefe, Father Quinn obtained in 1904 a written notice, signed by the former, being a notice such as is mentioned in Section 42. This notice Father Quinn lost or mislaid. He swears that on two occasions in 1904, one being in March or April, at McCloskey's place, and the other being about October, on the public highway, McCloskey told him to put him down as a Separate School supporter for 1905, and he further swears that he never was notified or informed by McCloskey that the latter withdrew the authority so given. Consequently, on January 19th, 1905, Father Quinn wrote out and signed McCloskey's and O'Keefe's names to a notice, such as is provided for by Section 42 of the Separate Schools Act, and handed same on that day to defendant's clerk, he then wrote McCloskey a note informing him of what he had done. The clerk appears to have been ill and absent from his office for a couple of weeks or so, after receiving the notice. On his return to his office he made the necessary entries in relation to the notice so received in the index book mentioned in Section 48 of the said Act. A few hours after making this entry he was waited on by Mr. McCloskey, who told him that Father Quinn had no authority from him to give the notice, and the clerk then placed in the index book, under McCloskey's name, a memo. in red ink as follows: 'Mr. McCloskey says not a supporter.' The assessor, in making up the assessment roll, either ignored the entries in the index book or considered that he should be guided altogether by the statement of the party to be assessed, so when McCloskey told him that he was a Public School supporter he assessed him as such. Why he placed O'Keefe on the assessment roll as a Public School supporter does not appear. Neither the assessor or O'Keefe gave evidence. In any event the assessor

placed both McCloskey and O'Keefe on the roll as Public School supporters, neither of them appealed against their assessment as such, nor was there any appeal against these men being assessed as Public School supporters, and the clerk failed to notify the Court of Revision of the error in the assessment as shown by his entries in the index book, and the roll became final under Section 66 of the Assessment Act, except in so far as defendant's had power under Section 50 of the Separate Schools Act to correct any mistake in the roll in the assessment of School supporters, and except in so far as there might be jurisdiction in the courts to direct payment of the taxes to the corporation actually entitled ultimately to receive them.

"In relation to the validity of the notice given by Father Quinn as agent for Messrs. O'Keefe and McCloskey, he denies having given any authority to Father Quinn to give notice for him, or having made any promise or agreement to be a Separate School supporter for 1905, and we have the circumstances that he told the clerk that Father Quinn had no authority to sign for him, and told the assessor that he was a Public School supporter. As against this we have the direct and very positive evidence of Father Quinn that he received the necessary verbal authority from McCloskey to put him down as a Separate School supporter for 1905, and they were paying no fees, nor was their father paying taxes, towards the support of the school. McCloskey admits that Father Quinn was then pressing him to become a Separate School supporter, and was making the matter all the time an urgent one. It is difficult to understand why McCloskey sent two of his children to the Separate School in the latter part of the year 1904 if he did not intend to become a Separate School supporter for 1905. He admits that he subsequently became and now is a Separate School supporter, and never gave any written notice under Section 42, other than that given by Father Quinn. He further admits that in 1906 he notified the then Reeve of defendant's corporation of his willingness that his school tax for 1905 should be paid over to Father Quinn's successor for the use of the Separate School. He never wrote to or went to see Father Quinn, challenging his right to sign the notice as his (McCloskey's) agent, and allowed Father Quinn to leave Chesterville in total ignorance that so serious an allegation as that he had signed another man's name to an important document without authority had been, or was to be made, against him. In my opinion the weight of the evidence and the admitted facts are so strongly in favor of the view that Father Quinn is correct when he says that McCloskey did give him authority to put him down as a Separate School supporter for 1905, that I am bound to hold that Father Quinn had authority from both McCloskey and O'Keefe to give as their agent, any notice necessary to make them Separate School supporters for 1905.

"If the notice given by Father Quinn on behalf of Messrs. McCloskey and O'Keefe was a valid notice under Section 42, which I hold to be, I think it follows that despite Messrs. McCloskey and O'Keefe appearing on the revised assessment roll for 1905 as Public School supporters, I am bound by the judgment of the Divisional Court in Sandwich East Separate School trustees vs. Town of Walkerville, 10, O. L. R. 214, to hold that the money collected from Messrs. McCloskey and O'Keefe for school taxes in 1905, to the extent of the sums claimed by plaintiffs belongs to them, and that they are entitled to payment from defendants out of the taxes collected by the latter from Messrs. McCloskey and O'Keefe the sum of \$105.81 claimed. This sum should have been paid to plaintiffs not later than December 14th, 1905.

"I give judgment for plaintiffs against defendants for \$105.81, with interest at five per cent. since December 14th, A. D., 1905, and the costs of this action.

"Dated at Cornwall this 17th day of January, A. D., 1908.

"(Signed), JAS. R. O'REILLY, Judge."

An appeal was taken to a Divisional Court of the High Court of Justice (consisting of Hon. Chief Justice Sir William Mulock and Justices Clute and Riddell), and was heard at Osgoode Hall, Toronto, on the 11th day of March, 1908, and was dismissed with costs.

In 1904 Sec. 54 of the Separate Schools Act was repealed by 4 Edw. VII., C. 24, S. 6, and the following section substituted therefor, to take effect on from and after 1st January, 1905.

In 1905 the Ontario Legislature amended the Separate School Act (by 5 Edw. VII., C. 13, assented to 25th May, 1905), as follows:

54) (1) A company may, by notice in that behalf to be given by the clerk of any municipality wherein a Separate School exists, require any part of the real property of which such company is either the owner, an occupant or not being such owner, is the tenant, occupant, or actual possessor, and any part of the business assessment or other assessments of such company made under the Assessment Act, to be entered, rated and assessed for the purpose of the said Separate School, and the proper assessor shall thereupon enter the said company, as a Separate School supporter, in the assessment roll in respect of the real property and business, or other assessments, if any, specially designated in that behalf, in or by the said notice, and the proper entries in that behalf shall be made in the prescribed column for Separate School rates, and so much of the real property and business or other assessment, if any, as may be designated shall be assessed accordingly in the name of the company for the purposes of the Separate School, and not for Public School purposes, but all other real property, and the remainder of the business or other assessments of the company, shall be separately entered and assessed in the name of the company, as for Public School purposes, provided always that the share or portion of the real property and business or other assessments of any company entered, rated or assessed in any municipality for Separate School purposes, under the provision of this section shall bear the same ratio and proportion to the whole of the assessment for real property, business or other assessments of any company within the municipality as the amount or proportion of the shares of the stock of the company, so far as the same are paid, or partly paid-up, and are held and possessed by persons who are Roman Catholics, bears to the whole amount of such paid or partly paid-up shares of stock of the company.

(2) A notice by the company to the clerk of the local municipality under the provisions of this section may be in the form or to the effect following:

To the clerk of (describing the municipality),

Take notice that (here insert the name of the company so as to sufficiently and reasonably designate it), pursuant to a resolution in that behalf of the directors of the said company, requires that hereafter and until this notice is either withdrawn or varied, so much of the whole of the assessment for real property, and business or other assessments of the company within (giving the name of the municipality), and hereafter specially designated, shall be entered, rated, and assessed for Separate School purposes, namely: one-fifth (or as the case may be), of all real property of the said company liable to assessment, in the said municipality, and one-fifth (or as the case may be) of the business for other assessment of the said company, in the said municipality.

Given on behalf of the said company, this (here insert date).

R. S., Secretary of the said Company.

(3) Any such notice given in pursuance of a resolution in that behalf of the directors of the company, shall for all purposes be

deemed to be sufficient, and every such notice so given shall be taken as continuing and in force, and to be acted upon, unless and until the same is withdrawn, varied or cancelled by any notice subsequently given, pursuant to any resolution of the company or of its directors. (Added by 5 Edw. VII., C. 13, S. 26.)

(4) Every such notice so given to such clerk shall remain with and be kept by him on file in his office, and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect any assessment rolls, and the assessor shall in each year before the completion and return of the assessment roll, search for and examine all notices which may be so on file in the clerk's office, and shall thereupon, in respect of such notices (if any), follow and conform thereto and to the provision of this Act in that behalf.

(5) The word "company" in this section shall mean and include any body corporate.

In 1904 the Court of Appeal for Ontario decided in the case of Grattan vs. The Ottawa Separate School Trustees (see Volume 9, O. L. R., p. 433), that the general policy of the law of Ontario, as declared by statutory enactments, was to require teachers of Separate Schools to undergo the same examination and receive the same certificates as common school teachers, exempting, however, those persons who hold certificates granted by trustees under the former consolidated statutes of Upper Canada C. 65, Section 28, and that the word "persons" in Section 36 of the Separate Schools Act (R. S. O. 1897, C. 294), was to be read as "individuals," and accordingly the Ottawa Separate School Board was enjoined from entering into a proposed contract with the Brothers of the Christian Schools for the direction and supplying of teachers for a boys' Separate School in Ottawa, and from constructing a school building such as was proposed in the contract in question, and from carrying the contract into effect.

Following this decision a stated case was prepared and submitted to the Court of Appeal for their opinion as to the rights of certain religious communities, including the Brothers of the Christian Schools, and persons commonly called the "Grey Nuns," regarding the rights of such persons as members of such communities who became members of such communities after the passing of the British North America Act, 1867, to be considered qualified teachers for the purposes of the Separate Schools Act, and eligible for employment as teachers in the Roman Catholic Schools in Ontario where such teachers had not received certificates of qualification to teach in the Public Schools as required by Section 36 of the Separate Schools Act, and the Court of Appeal decided that such persons were not qualified teachers, and not eligible for employment as such, and an appeal was taken to the Lords of the Privy Council, who upheld the judgment of the Court of Appeal.

At the session of the Legislature in 1907 a bill was introduced by the Minister of Education, entitled, "An Act respecting the qualification of certain teachers," and although strong opposition was made to the bill by the Joint Committee on Legislation of the Grand Lodge of both Ontario East and West, the bill was passed practically without amendment.

It is now to be found in the statutes of 1897 as C. 52, and although not printed in full here, is, nevertheless, important as making provisions whereby permanent certificates may easily be obtained by persons belonging to so-called religious and educational communities. The Act is made applicable also to Public Schools, in which either English or French or English and German are the language of instruction as provided for in the regulations of the Department of Education.

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